

1 HONORABLE RICHARD A. JONES  
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10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE  
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15 JOHN YIN,  
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17 Petitioner,

v.  
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UNITED STATES OF AMERICA,  
Respondent.  
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CASE NO. 17-CV-1553-RAJ  
ORDER  
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This matter comes before the Court on *pro se* Petitioner John Yin's motion under  
28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence By a Person in Federal  
Custody. Dkt.<sup>1</sup> # 1. For the reasons that follow, the Court **DENIES** Mr. Yin's motion.

I. BACKGROUND

From 2009 to mid-2015, Mr. Yin sold modified Point of Sale (POS) devices to  
local retail stores and restaurants. Crim. Dkt. #7 at 5. These modified POS devices  
allowed businesses to underreport sales to state and federal tax authorities and avoid  
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<sup>1</sup> "Dkt." refers to Mr. Yin's current 28 U.S.C. § 2255 claim, 17-cv-01553-RAJ. "Crim. Dkt." refers to the docket for the underlying criminal case, 16-cr-00314-RAJ. Finally, "Garnish. Dkt." refers to the docket for the garnishment action taken by the Government against Mr. Yin for his failure to pay restitution, 17-cv-01284-JLR.

1 paying taxes on those unreported sales. *Id.* at 7. The Government charged Mr. Yin with  
2 Wire Fraud and Conspiracy to Defraud the Government on November 29, 2016. Crim.  
3 Dkt. #1. Mr. Yin entered into a plea agreement on December 2, 2016. Crim. Dkt. #7. In  
4 that agreement, Mr. Yin pled guilty to Wire Fraud and Conspiracy to Defraud the  
5 Government in violation of 18 U.S.C. §§ 1343 and 371. *Id.* at 2. Mr. Yin also agreed to  
6 pay restitution in the amount of \$3,445,589.00 to the Washington State Department of  
7 Revenue and the United States Treasury. *Id.* at 4. This amount approximated the amount  
8 of unpaid and unreported taxes attributed to the use of modified POS devices supplied by  
9 Mr. Yin. Crim. Dkt. #7 at 7. The plea agreement included a provision that Mr. Yin would  
10 receive credit towards his restitution debt for “any amounts already paid.” *Id.* at 4.

11 On April 14, 2017, the Court sentenced Mr. Yin to eighteen months of  
12 imprisonment and ordered him to pay restitution in accordance with his plea agreement.  
13 Crim. Dkt. #23. During the sentencing hearing, the Government clarified the plea  
14 agreement’s restitution section that granted Mr. Yin credit for “amounts already paid.”  
15 The Government stated that Mr. Yin would receive restitution credit for any payments of  
16 unpaid taxes made by businesses that used modified POS devices supplied by Mr. Yin.  
17 Crim. Dkt. #25 at 14. The Government also agreed to assist Mr. Yin and his counsel, Mr.  
18 Davis, in tracking these payments for purposes of calculating Mr. Yin’s remaining  
19 restitution debt. *Id.* at 16.

20 Following sentencing, Mr. Yin failed to begin paying restitution. On June 21,  
21 2017, the court issued a Writ of Continuing Garnishment to Mr. Yin and T. Rowe Price,  
22 the holder of Mr. Yin’s retirement accounts. Garnish. Dkt. #3. On August 7, 2017, having  
23 received no restitution payment from Mr. Yin, the Government moved to have the court  
24 enter a garnishment order directing T. Rowe Price to transfer eligible funds from Mr.  
25 Yin’s retirement account to the court as payment towards his restitution debt. Garnish.  
26 Dkt. #7 at 2–3.

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1       Mr. Yin's attorney challenged the Government's motion on August 17, 2017,  
2 asserting that the garnishment writ was improperly served and that Mr. Yin's retirement  
3 funds were protected from the proposed garnishment order. Garnish. Dkt. #9 Ex. 1. Mr.  
4 Yin also simultaneously attempted to challenge the Government's motion *pro se*.  
5 Garnish. Dkt. #11. As a part of his challenge to the garnishment motion, Mr. Yin made a  
6 claim of ineffective assistance of counsel. Garnish. Dkt. #14 at 4. Mr. Yin claimed that  
7 Mr. Davis was ineffective in negotiating his plea agreement because the agreement did  
8 not include a clear and precise method to account for the credit he was to receive for any  
9 tax payments made by businesses that used his modified POS devices. *Id.*

10      The court ordered Mr. Yin's *pro se* filings stricken because he was still  
11 represented by Mr. Davis at the time of his response to the garnishment motion. Garnish.  
12 Dkt. #17. Mr. Davis then moved to withdraw from representing Mr. Yin because of Mr.  
13 Yin's claims of ineffective assistance of counsel. Garnish. Dkt. #18. The court granted  
14 Mr. Davis's motion on October 5, 2017. Garnish. Dkt. #21.

15      On October 19, 2017, Mr. Yin filed this Petition for a Writ of Habeas Corpus  
16 asking for relief pursuant to 28 U.S.C. § 2255, claiming a violation of his Sixth  
17 Amendment right to the assistance of counsel. Dkt. #1.

18      **II.     LEGAL STANDARD**

19      Under 28 U.S.C. § 2255(a), a federal prisoner may file a motion to vacate, set  
20 aside, or correct his or her sentence "upon the ground that the sentence was imposed in  
21 violation of the Constitution or laws of the United States, or that the court was without  
22 jurisdiction to impose such sentence, or that the sentence was in excess of the maximum  
23 authorized by law, or is otherwise subject to collateral attack . . . ."

24      Under 28 U.S.C. § 2253(c), there is no right to appeal from a final order in a  
25 proceeding under § 2255 unless a circuit judge issues a certificate of appealability. 28  
26 U.S.C. § 2253(c)(1)(B).

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1           **III. DISCUSSION**

2           **A. Restitution Claims Under § 2255**

3           Section 2255 is only available to prisoners claiming the right to be released from  
4 custody. *United States v. Thiele*, 314 F.3d 399, 400 (9th Cir. 2002); 28 U.S.C. § 2255(a).  
5 A petitioner's request for relief from a restitution order cannot be made under § 2255.  
6 *Thiele*, 314 F.3d at 401. Mr. Yin's petition, while claiming a violation of his Sixth  
7 Amendment right to counsel, is essentially challenging the validity of his restitution  
8 order. Mr. Yin premises his Motion on the claim that his attorney, Mr. Davis, was  
9 ineffective because Mr. Davis did not ensure his plea agreement was clear on the issue of  
10 restitution. Dkt. #1 at 4. Mr. Yin makes no claim that his guilty plea and subsequent  
11 imprisonment was unconstitutional because of ineffective assistance of counsel. Dkt. #5  
12 at 1. *See also Kaminski v. United States*, 334 F.3d 84, 89 (2d Cir. 2003) (“Collateral relief  
13 from noncustodial punishments is not made more readily available to a petitioner just  
14 because that petitioner happens at the time to be subject also to custodial penalties.”).  
15 Because Mr. Yin does not challenge his imprisonment—and only challenges the  
16 accounting method for his restitution debt—he cannot obtain the relief he desires through  
17 a § 2255 petition.

18           **B. Ineffective Assistance of Counsel**

19           To the extent that Mr. Yin is challenging the validity of his plea agreement, he  
20 fails to show that Mr. Davis' representation was objectively unreasonable. A claim for  
21 ineffective assistance of counsel requires a showing that (1) counsel's representation fell  
22 below an objective standard of reasonableness, and (2) the claimant was prejudiced by  
23 the inadequate performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The  
24 first prong requires showing “that counsel made errors so serious that counsel was not  
25 functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Id.* In  
26 applying this first prong, courts have a strong presumption “that counsel’s representation  
27 was within the wide range of reasonable professional assistance.” *Harrington v. Richter*,

1 562 U.S. 86, 104 (2011) (quotation marks and citation omitted). For habeas petitions  
2 claiming ineffective assistance of counsel, courts do not have to address the second prong  
3 of the *Strickland* test if the petitioner cannot establish that counsel’s representation was  
4 objectively unreasonable. *Siripongs v. Calderon*, 133 F.3d 732, 737 (9th Cir. 1998).

5 Mr. Yin bases his ineffective assistance of counsel claim on the argument that Mr.  
6 Davis omitted “a critical restitution obligation accounting requirement as a part of his  
7 plea agreement.” Dkt. #5 at 2 (the “critical restitution obligation” referred to is the credit  
8 he should receive towards his restitution for tax payments made by businesses that used  
9 modified POS devices). He avers that payments made by “coconspirators . . . must be  
10 made a part of the contract and the record in this cause.” *Id.* Because of these alleged  
11 errors, Mr. Yin states that he “*could* have received a better plea bargain.” Dkt. #1 at 4  
12 (emphasis added).

13 Mr. Yin’s plea agreement states that Mr. Yin will “receive credit for any amounts  
14 already paid.” Crim. Dkt. #7 at 4. If there was any ambiguity regarding the restitution  
15 credit owed to Mr. Yin in the plea agreement, the Government’s courtroom statements  
16 during sentencing should have removed all doubt. During sentencing, the Government  
17 explained that “amounts paid by the restaurants [using modified POS devices] . . . should  
18 be credited to Mr. Yin’s restitution obligation.” Crim. Dkt. #25 at 14. Mr. Yin presents no  
19 evidence of any errors in his plea negotiations or sentencings that rise to the level of  
20 effectively depriving him of effective counsel. The plea agreement’s plain language,  
21 taken together with the Government’s clarification in its sentencing statements, discredit  
22 Mr. Yin’s contention that a “critical restitution obligation” was omitted from the plea  
23 agreement “contract.”

24 Mr. Yin’s claims do not overcome the strong presumption that “counsel’s  
25 representation was within the wide range of reasonable professional assistance.”  
26 *Harrington*, 562 U.S. at 104. Mr. Yin provides no legal authority that supports his  
27 contention that counsel must precisely define how credits for restitution debt should be

1 incorporated into a plea agreement in order to provide effective assistance of counsel. Mr.  
2 Davis's representation was reasonable because he (1) negotiated a plea agreement in  
3 which Mr. Yin would receive credit for tax payments made by other parties and (2)  
4 worked with the Government on a system that would periodically update Mr. Yin on the  
5 amount of credit that had been applied to his restitution debt. Crim. Dkt. #14 at 9–10;  
6 Crim. Dkt. #25 at 16; Crim. Dkt. #17 at 2–3 and Ex. 2. Because Mr. Yin has not  
7 established that Mr. Davis's representation was objectively unreasonable, the Court does  
8 not need to address the second prong of *Strickland* at this time. *See Siripongs*, 133 F.3d at  
9 737.

10 **IV. CONCLUSION**

11 For the reasons stated above, the Court **DENIES** Mr. Yin's Motion Under 28  
12 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal  
13 Custody (Dkt. #1) and directs the clerk to **DISMISS** this action and enter judgment for  
14 the Government. The Court finds that reasonable jurists would not debate the resolution  
15 of this motion. Accordingly, the Court declines to issue a certificate of appealability. *See*  
16 Fed. R. Governing § 2255 Proceedings, Rule 11(a); *Slack v. McDaniel*, 529 U.S. 473, 484  
17 (2000).

18 Dated this 19th day of April, 2018.

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22 The Honorable Richard A. Jones  
23 United States District Judge  
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